



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB0387

Introduced 1/26/2007, by Rep. Mary E. Flowers

SYNOPSIS AS INTRODUCED:

225 ILCS 60/23

from Ch. 111, par. 4400-23

225 ILCS 60/23.1 new

Amends the Medical Practice Act of 1987. Provides for the public release of individual profiles on persons licensed under the Act, including information relating to criminal charges, administrative disciplinary actions, and hospital privilege revocations. Provides that a physician may elect to include certain information in his or her profile. Provides that certain information collected for physician profiles is not confidential. Provides that, when collecting information or compiling reports intended to compare physicians, the Disciplinary Board shall require that only the most basic identifying information from mandatory reports may be used, and details about a patient or personal details about a physician that are not already a matter of public record through another source must not be released. Effective immediately.

LRB095 05265 RAS 25343 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Medical Practice Act of 1987 is amended by
5 changing Section 23 and by adding Section 23.1 as follows:

6 (225 ILCS 60/23) (from Ch. 111, par. 4400-23)

7 (Section scheduled to be repealed on December 31, 2008)

8 Sec. 23. Reports relating to professional conduct and
9 capacity.

10 (A) Entities required to report.

11 (1) Health care institutions. The chief administrator
12 or executive officer of any health care institution
13 licensed by the Illinois Department of Public Health shall
14 report to the Disciplinary Board when any person's clinical
15 privileges are terminated or are restricted based on a
16 final determination, in accordance with that institution's
17 by-laws or rules and regulations, that a person has either
18 committed an act or acts which may directly threaten
19 patient care, and not of an administrative nature, or that
20 a person may be mentally or physically disabled in such a
21 manner as to endanger patients under that person's care.
22 Such officer also shall report if a person accepts
23 voluntary termination or restriction of clinical

1 privileges in lieu of formal action based upon conduct
2 related directly to patient care and not of an
3 administrative nature, or in lieu of formal action seeking
4 to determine whether a person may be mentally or physically
5 disabled in such a manner as to endanger patients under
6 that person's care. The Medical Disciplinary Board shall,
7 by rule, provide for the reporting to it of all instances
8 in which a person, licensed under this Act, who is impaired
9 by reason of age, drug or alcohol abuse or physical or
10 mental impairment, is under supervision and, where
11 appropriate, is in a program of rehabilitation. Such
12 reports shall be strictly confidential and may be reviewed
13 and considered only by the members of the Disciplinary
14 Board, or by authorized staff as provided by rules of the
15 Disciplinary Board. Provisions shall be made for the
16 periodic report of the status of any such person not less
17 than twice annually in order that the Disciplinary Board
18 shall have current information upon which to determine the
19 status of any such person. Such initial and periodic
20 reports of impaired physicians shall not be considered
21 records within the meaning of The State Records Act and
22 shall be disposed of, following a determination by the
23 Disciplinary Board that such reports are no longer
24 required, in a manner and at such time as the Disciplinary
25 Board shall determine by rule. The filing of such reports
26 shall be construed as the filing of a report for purposes

1 of subsection (C) of this Section.

2 (2) Professional associations. The President or chief
3 executive officer of any association or society, of persons
4 licensed under this Act, operating within this State shall
5 report to the Disciplinary Board when the association or
6 society renders a final determination that a person has
7 committed unprofessional conduct related directly to
8 patient care or that a person may be mentally or physically
9 disabled in such a manner as to endanger patients under
10 that person's care.

11 (3) Professional liability insurers. Every insurance
12 company which offers policies of professional liability
13 insurance to persons licensed under this Act, or any other
14 entity which seeks to indemnify the professional liability
15 of a person licensed under this Act, shall report to the
16 Disciplinary Board the settlement of any claim or cause of
17 action, or final judgment rendered in any cause of action,
18 which alleged negligence in the furnishing of medical care
19 by such licensed person when such settlement or final
20 judgment is in favor of the plaintiff.

21 (4) State's Attorneys. The State's Attorney of each
22 county shall report to the Disciplinary Board all instances
23 in which a person licensed under this Act is convicted or
24 otherwise found guilty of the commission of any felony. The
25 State's Attorney of each county may report to the
26 Disciplinary Board through a verified complaint any

1 instance in which the State's Attorney believes that a
2 physician has willfully violated the notice requirements
3 of the Parental Notice of Abortion Act of 1995.

4 (5) State agencies. All agencies, boards, commissions,
5 departments, or other instrumentalities of the government
6 of the State of Illinois shall report to the Disciplinary
7 Board any instance arising in connection with the
8 operations of such agency, including the administration of
9 any law by such agency, in which a person licensed under
10 this Act has either committed an act or acts which may be a
11 violation of this Act or which may constitute
12 unprofessional conduct related directly to patient care or
13 which indicates that a person licensed under this Act may
14 be mentally or physically disabled in such a manner as to
15 endanger patients under that person's care.

16 (B) Mandatory reporting. All reports required by items
17 (34), (35), and (36) of subsection (A) of Section 22 and by
18 Section 23 shall be submitted to the Disciplinary Board in a
19 timely fashion. The reports shall be filed in writing within 60
20 days after a determination that a report is required under this
21 Act. All reports shall contain the following information:

22 (1) The name, address and telephone number of the
23 person making the report.

24 (2) The name, address and telephone number of the
25 person who is the subject of the report.

26 (3) The name and date of birth of any patient or

1 patients whose treatment is a subject of the report, if
2 available, or other means of identification if such
3 information is not available, identification of the
4 hospital or other healthcare facility where the care at
5 issue in the report was rendered, provided, however, no
6 medical records may be revealed.

7 (4) A brief description of the facts which gave rise to
8 the issuance of the report, including the dates of any
9 occurrences deemed to necessitate the filing of the report.

10 (5) If court action is involved, the identity of the
11 court in which the action is filed, along with the docket
12 number and date of filing of the action.

13 (6) Any further pertinent information which the
14 reporting party deems to be an aid in the evaluation of the
15 report.

16 The Disciplinary Board or Department may also exercise the
17 power under Section 38 of this Act to subpoena copies of
18 hospital or medical records in mandatory report cases alleging
19 death or permanent bodily injury. Appropriate rules shall be
20 adopted by the Department with the approval of the Disciplinary
21 Board.

22 When the Department has received written reports
23 concerning incidents required to be reported in items (34),
24 (35), and (36) of subsection (A) of Section 22, the licensee's
25 failure to report the incident to the Department under those
26 items shall not be the sole grounds for disciplinary action.

1 Nothing contained in this Section shall act to in any way,
2 waive or modify the confidentiality of medical reports and
3 committee reports to the extent provided by law. Except for
4 information required for physician profiles under Section 23.1
5 of this Act, any ~~Any~~ information reported or disclosed shall be
6 kept for the confidential use of the Disciplinary Board, the
7 Medical Coordinators, the Disciplinary Board's attorneys, the
8 medical investigative staff, and authorized clerical staff, as
9 provided in this Act, and shall be afforded the same status as
10 is provided information concerning medical studies in Part 21
11 of Article VIII of the Code of Civil Procedure, except that the
12 Department may disclose information and documents to a federal,
13 State, or local law enforcement agency pursuant to a subpoena
14 in an ongoing criminal investigation. Furthermore, information
15 and documents disclosed to a federal, State, or local law
16 enforcement agency may be used by that agency only for the
17 investigation and prosecution of a criminal offense.

18 (C) Immunity from prosecution. Any individual or
19 organization acting in good faith, and not in a wilful and
20 wanton manner, in complying with this Act by providing any
21 report or other information to the Disciplinary Board or a peer
22 review committee, or assisting in the investigation or
23 preparation of such information, or by voluntarily reporting to
24 the Disciplinary Board or a peer review committee information
25 regarding alleged errors or negligence by a person licensed
26 under this Act, or by participating in proceedings of the

1 Disciplinary Board or a peer review committee, or by serving as
2 a member of the Disciplinary Board or a peer review committee,
3 shall not, as a result of such actions, be subject to criminal
4 prosecution or civil damages.

5 (D) Indemnification. Members of the Disciplinary Board,
6 the Medical Coordinators, the Disciplinary Board's attorneys,
7 the medical investigative staff, physicians retained under
8 contract to assist and advise the medical coordinators in the
9 investigation, and authorized clerical staff shall be
10 indemnified by the State for any actions occurring within the
11 scope of services on the Disciplinary Board, done in good faith
12 and not wilful and wanton in nature. The Attorney General shall
13 defend all such actions unless he or she determines either that
14 there would be a conflict of interest in such representation or
15 that the actions complained of were not in good faith or were
16 wilful and wanton.

17 Should the Attorney General decline representation, the
18 member shall have the right to employ counsel of his or her
19 choice, whose fees shall be provided by the State, after
20 approval by the Attorney General, unless there is a
21 determination by a court that the member's actions were not in
22 good faith or were wilful and wanton.

23 The member must notify the Attorney General within 7 days
24 of receipt of notice of the initiation of any action involving
25 services of the Disciplinary Board. Failure to so notify the
26 Attorney General shall constitute an absolute waiver of the

1 right to a defense and indemnification.

2 The Attorney General shall determine within 7 days after
3 receiving such notice, whether he or she will undertake to
4 represent the member.

5 (E) Deliberations of Disciplinary Board. Upon the receipt
6 of any report called for by this Act, other than those reports
7 of impaired persons licensed under this Act required pursuant
8 to the rules of the Disciplinary Board, the Disciplinary Board
9 shall notify in writing, by certified mail, the person who is
10 the subject of the report. Such notification shall be made
11 within 30 days of receipt by the Disciplinary Board of the
12 report.

13 The notification shall include a written notice setting
14 forth the person's right to examine the report. Included in
15 such notification shall be the address at which the file is
16 maintained, the name of the custodian of the reports, and the
17 telephone number at which the custodian may be reached. The
18 person who is the subject of the report shall submit a written
19 statement responding, clarifying, adding to, or proposing the
20 amending of the report previously filed. The person who is the
21 subject of the report shall also submit with the written
22 statement any medical records related to the report. The
23 statement and accompanying medical records shall become a
24 permanent part of the file and must be received by the
25 Disciplinary Board no more than 30 days after the date on which
26 the person was notified by the Disciplinary Board of the

1 existence of the original report.

2 The Disciplinary Board shall review all reports received by
3 it, together with any supporting information and responding
4 statements submitted by persons who are the subject of reports.
5 The review by the Disciplinary Board shall be in a timely
6 manner but in no event, shall the Disciplinary Board's initial
7 review of the material contained in each disciplinary file be
8 less than 61 days nor more than 180 days after the receipt of
9 the initial report by the Disciplinary Board.

10 When the Disciplinary Board makes its initial review of the
11 materials contained within its disciplinary files, the
12 Disciplinary Board shall, in writing, make a determination as
13 to whether there are sufficient facts to warrant further
14 investigation or action. Failure to make such determination
15 within the time provided shall be deemed to be a determination
16 that there are not sufficient facts to warrant further
17 investigation or action.

18 Should the Disciplinary Board find that there are not
19 sufficient facts to warrant further investigation, or action,
20 the report shall be accepted for filing and the matter shall be
21 deemed closed and so reported to the Secretary. The Secretary
22 shall then have 30 days to accept the Medical Disciplinary
23 Board's decision or request further investigation. The
24 Secretary shall inform the Board in writing of the decision to
25 request further investigation, including the specific reasons
26 for the decision. The individual or entity filing the original

1 report or complaint and the person who is the subject of the
2 report or complaint shall be notified in writing by the
3 Secretary of any final action on their report or complaint.

4 (F) Summary reports. The Disciplinary Board shall prepare,
5 on a timely basis, but in no event less than one every other
6 month, a summary report of final actions taken upon
7 disciplinary files maintained by the Disciplinary Board. The
8 summary reports shall be sent by the Disciplinary Board to
9 every health care facility licensed by the Illinois Department
10 of Public Health, every professional association and society of
11 persons licensed under this Act functioning on a statewide
12 basis in this State, the American Medical Association, the
13 American Osteopathic Association, the American Chiropractic
14 Association, all insurers providing professional liability
15 insurance to persons licensed under this Act in the State of
16 Illinois, the Federation of State Medical Licensing Boards, and
17 the Illinois Pharmacists Association.

18 (G) Any violation of this Section shall be a Class A
19 misdemeanor.

20 (H) If any such person violates the provisions of this
21 Section an action may be brought in the name of the People of
22 the State of Illinois, through the Attorney General of the
23 State of Illinois, for an order enjoining such violation or for
24 an order enforcing compliance with this Section. Upon filing of
25 a verified petition in such court, the court may issue a
26 temporary restraining order without notice or bond and may

1 preliminarily or permanently enjoin such violation, and if it
2 is established that such person has violated or is violating
3 the injunction, the court may punish the offender for contempt
4 of court. Proceedings under this paragraph shall be in addition
5 to, and not in lieu of, all other remedies and penalties
6 provided for by this Section.

7 (Source: P.A. 94-677, eff. 8-25-05.)

8 (225 ILCS 60/23.1 new)

9 (Section scheduled to be repealed on December 31, 2008)

10 Sec. 23.1. Public disclosure of disciplinary records.

11 (a) The Disciplinary Board shall collect from the reports
12 required in subsection (A) of Section 23 all of the following
13 information to create individual profiles on licensees, in a
14 format created by the Disciplinary Board that shall be
15 available for dissemination to the public:

16 (1) A description of any criminal convictions for
17 felonies within the most recent 10 years. For the purposes
18 of this item, a person shall be deemed to be convicted of a
19 crime if he or she pled guilty or if he or she was found or
20 adjudged guilty by a court of competent jurisdiction.

21 (2) A description of any final disciplinary actions
22 taken by the Disciplinary Board within the most recent 10
23 years. All final disciplinary actions shall remain a matter
24 of public record.

25 (3) A description of any final disciplinary actions

1 taken by licensing boards in other states within the most
2 recent 10 years, but in no event earlier than the year
3 1995. This information shall come from the Federation of
4 State Medical Boards or other national reporting agencies.
5 Information that is confidential in the reporting state
6 shall not be included in the profile.

7 (4) A description of revocation or involuntary
8 restriction of hospital privileges as required in
9 subsection (A) (1) of Section 23. Only cases that have
10 occurred within the most recent 10 years shall be disclosed
11 by the Disciplinary Board to the public.

12 (5) Names of medical schools and dates of graduation.

13 The Disciplinary Board shall provide each licensee with a
14 copy of his or her profile prior to release to the public. A
15 licensee shall be provided a reasonable time to correct factual
16 inaccuracies that appear in his or her profile.

17 (a-5) A licensee may elect to include in his or her profile
18 the following information that shall be available for
19 dissemination to the public:

20 (1) specialty board certification;

21 (2) number of years in practice;

22 (3) names of the hospitals where the licensee has
23 privileges;

24 (4) appointments to medical school faculties and
25 indication as to whether a licensee has had a
26 responsibility for graduate medical education within the

1 most recent 10 years;

2 (5) publications in peer-reviewed medical literature
3 within the most recent 10 years;

4 (6) professional or community service activities and
5 awards;

6 (7) the location of the licensee's primary practice
7 setting;

8 (8) the identification of any translating services
9 that may be available at the licensee's primary practice
10 location; and

11 (9) an indication of whether the licensee participates
12 in the Medicaid program.

13 (b) The Department shall maintain a toll free telephone
14 line for responding to requests for information about the
15 disciplinary records of physicians in Illinois.

16 (c) When collecting information or compiling reports
17 intended to compare physicians, the Disciplinary Board shall
18 require that:

19 (1) physicians shall be meaningfully involved in the
20 development of all aspects of the profile methodology,
21 including collection methods, formatting, and methods and
22 means for release and dissemination;

23 (2) the entire methodology for collecting and
24 analyzing the data shall be disclosed to all relevant
25 physician organizations and to all physicians under
26 review;

1 (3) data collection and analytical methodologies shall
2 be used that meet accepted standards of validity and
3 reliability;

4 (4) the limitations of the data sources and analytic
5 methodologies used to develop physician profiles shall be
6 clearly identified and acknowledged, including but not
7 limited to the appropriate and inappropriate uses of the
8 data;

9 (5) provider profiles and other information that have
10 been compiled regarding physician performance shall be
11 shared with physicians under review prior to dissemination
12 provided that an opportunity for corrections and additions
13 of helpful explanatory comments shall be afforded before
14 publication, and provided further that the profiles shall
15 include only data that reflect care under the control of
16 the physician for whom the profile is prepared;

17 (6) comparisons among physician profiles shall adjust
18 for patient case mix and other relevant risk factors and
19 control for provider peer groups, when appropriate;

20 (7) effective safeguards to protect against the
21 unauthorized use or disclosure of physician profiles shall
22 be developed and implemented;

23 (8) effective safeguards to protect against the
24 dissemination of inconsistent, incomplete, invalid,
25 inaccurate, or subjective profile data shall be developed
26 and implemented;

1 (9) the quality and accuracy of physician profiles,
2 data sources, and methodologies shall be evaluated
3 regularly; and

4 (10) only the most basic identifying information from
5 mandatory reports may be used, and details about a patient
6 or personal details about a physician not already a matter
7 of public record through another source must not be
8 released.

9 Section 99. Effective date. This Act takes effect upon
10 becoming law.